IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 228 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

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DR.KADVABHAI SIDIBHAI PARMAR - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
PARTY-IN-PERSON for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
MR HARIN P RAVAL for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 25/04/2007

ORAL JUDGMENT

1. Dr. Kadvabhai Sidibhai Parmar, party-in-person, has filed this Revision Application against

the judgement and order dated 18.3.2006 passed by the learned Judicial Magistrate First Class, Dholka, rejecting the application on the ground that the Court has no jurisdiction to direct to give him passport.

2. I have heard the applicant party in person. On behalf of respondent No. 2 I have heard Mr. H.P. Raval, learned counsel for respondent No. 2. Party in person Dr. Kadvabhai Sidibhai Parmar, aged 74 years, is conducting a Lok Adalat at Bhoodanwadi Kavitha for the last 25 years. It is the case of the applicant that the P.S.I. Of Bavla Police Station filed criminal case Nos. 1346 of 1987, 53 of 1993 and an FIR No. 136 of 1995. In view of these proceedings, the applicant had to go in jail on 1.1.1996. The authority also issued order of detention under the provisions of PASA. However, the PASA Board ordered to quash the order of detention and release the applicant. There are some proceedings in Dholka Court also. The applicant desires to go abroad and as he desired passport, so he applied for the same. The Passport authority has enquired about the proceedings

and as they came to know about the aforesaid proceedings, they have withheld issuing the passport to the applicant in view of the criminal case pending against the applicant. As the applicant has to deliver some lectures in foreign country, he desired to go abroad. For that reason he applied for a passport. The Passport authority in view of criminal proceedings pending against the applicant, did not issue passport to the applicant and therefore the applicant has filed the present petition with a prayer that the Regional Passport Authority may be directed to issue passport to the applicant to enable him to attend the marriage ceremony at Port-Shepstone R.S.A. (South Africa) as well as to meet his relatives and friends in U.S.A., U.K., Israil, etc.

3. I have heard Mr. Harin P. Raval, learned counsel for the respondent No. 2. He has made the following submissions:

3.1 The applicant has approached this Court under Section 397 read with Section 401 of the Criminal Procedure Code, 1973, challenging the

judgement and order dated 18.3.2006 of the learned Judicial Magistrate, First Class, Dholka, rejecting the application as not being maintainable. The application appears to be for grant of directions to extend the validity of the passport issued under orders of this Court.

3.2 By judgement and order dated 2.1.2007 rendered by the learned Additional Judicial Magistrate, First Class, Dholka, the party in person appears to have been convicted for different offences. The following sentences / punishments are awarded:

(a) For offence under Section 186 of the Indian Penal Code sentence of two months simple imprisonment and fine of Rs. 500/- and in lieu whereof further simple imprisonment of five days;

(b) After holding guilty of offence under Section 332, the party in person – present applicant appears to have been sentenced to

imprisonment of one year and a fine of Rs. 5000/- and in lieu whereof further simple imprisonment of 15 days. The sentences are ordered to run concurrently.

3.3 The learned counsel for respondent No. 2 has submitted that earlier the applicant had filed Criminal Revision Application No. 37 of 2006 before the learned Judicial Magistrate, First Class, Dholka, praying for dismissal of the criminal cases against the applicant and to order high powered inquiry. He has further prayed to direct Government of Gujarat to suspend services of police officers and to further direct the Government of Gujarat to allocate post, if any, out of the Ahmedabad District area. It is also prayed for to direct the Regional Passport Officer, Ahmedabad, to issue passport to enable the applicant to attend the marriage ceremony for a limited period. The applicant has filed Criminal Revision Application No. 37 of 2006 on 14.3.2006.

3.4 From the record it appears that the learned Judicial Magistrate, Dholka, by his order dated

18.3.2006, rejected the application of the applicant on the ground that the Court has no jurisdiction to issue direction for directing extension of the validity of the passport.

3.5 Being aggrieved and dissatisfied with the aforesaid order passed by the learned Judicial Magistrate, Dholka, the present Revision Application has been filed by the applicant on 20.3.2006 with a prayer that the learned trial Judge be ordered to dismiss the criminal cases and to direct the Regional Passport Officer to issue passport to the party in person for limited period and to set aside the order dated 18.3.2006 passed by the learned Judicial Magistrate, Dholka.

3.6 This Court issued notice on 21.3.2006 making it returnable 5.4.2006. Thereafter, the matter has been adjourned from time to time.

3.7 The applicant filed one affidavit on 24.3.2006 praying for an urgent issuance of the passport. In view of this, the matter was placed for

hearing on 5.4.2006. This Court (Coram: P.B. Majmudar, J) passed order on 5.4.2006 directing notice to be issued to the newly added party. It was recorded that it was unfortunate that the applicant-party in person is not receiving passport on the ground that the police has given adverse report on the basis of the complaint which is 15 years old. The learned counsel further submitted that the letter of the Regional Passport Officer was placed on record that in view of pendency of Criminal Case No. 53 of 1995 under Sections 186 and 332 of IPC, passport cannot be issued. Thereafter, the matter is adjourned to 7.4.2006 with directions to the concerned Police Officer of Dholka Police Station to remain present with observation that if there is no case pending against the applicant – party in person, report be prepared and submitted to the Court which could be given to the advocate for the Regional Passport Officer so that the application for passport can be processed.

3.8 Further again on 7.4.2006 this Court passed order. The Court recorded that the party in person

abused the lawyers and has committed contempt of Court by interfering with the Court proceedings and abusing the lawyers as a whole. Thereafter, the party in person tendered unconditional apology and only in view of the fact that the party in person is a senior citizen and with a view to see that the case is not delayed further, unconditional apology was accepted.

3.9 The statement of the learned Central Government Standing counsel was recorded that since the police report was not adverse, passport could be issued for temporary period of one year since the criminal cases were pending. The party in person was asked to approach the Passport Officer so that the application can be processed. For other prayer as regards quashing of criminal complaints pending against the party-in-person – present applicant, revision application is admitted. However, no date of final hearing is fixed.

3.10 The learned central Government Standing counsel further states that in so far as other prayers seeking quashing of criminal proceedings are

concerned, the revision application is now infructuous in view of the fact that the party in person has since been convicted by the Court of the competent criminal jurisdiction and the appeal against it is pending.

3.11 Thereafter on 21.9.2006 the matter is adjourned after recording brief facts by this Court (Coram: R.R. Tripathi, J). Thereafter, the matter was adjourned to 9.10.2006. The matter was again adjourned to 1.11.2006. Thereafter, on the matter being taken up for hearing on 1.11.2006, directions are issued to the learned Judicial Magistrate First Class, Dholka, to hear Criminal Case Nos. 1346 of 1987 and 53 of 1993 on day to day basis and decide the same expeditiously but not later than 30.11.2006. With regard to the Chapter case, directions were issued to decide on or before 30.11.2006.

3.12 The learned counsel further submitted that on 22.12.2006 directions were issued to the office to inquire about present status of criminal case Nos. 1346 of 1987 and 53 of 1993 pending in the Court of

the learned Judicial Magistrate First Class, Dholka, and to make report to the Court on 27.12.2006. Thereafter, on 27.12.2006 this Court recorded that since judgement is awaited in the Court below, the matter is adjourned to 8.2.2007.

3.13 The Court recorded the fact that applicant -party in person is convicted on 8.2.2007 and he has filed appeal bearing No. 1/07 and 2/07 before the learned Sessions Judge. The Court directed the party in person to produce judgment for perusal. The matter was adjourned to 23.2.2007. The judgements of the conviction were placed on record on 23.2.2007 and the matter was adjourned to 28.3.2007.

3.14 Thereafter, on 28.3.2007 this Court issued a direction to show name of the Asst. Solicitor General with a direction to give a copy of the petition and the matter was adjourned to 2.4.2007.

3.15 On 5.4.2007 this Court recorded the fact that the party in person was given passport for one year, keeping in mind three different cases and

deposition from record that party in person – applicant has been held guilty in two criminal cases and is enjoying bail and the appeal is pending. The Court issued notice for consideration as to why request of the applicant could not be accepted for extending validity of the passport. Thereafter, the matter was adjourned to 12.4.2007 and 24.4.2007.

3.16 In view of these facts and circumstances of the case, the learned counsel for the Central Government submitted that passport cannot be issued to the applicant – party in person in view of the provisions of Section 6(2)(e) of the Passport Act, 1967 which reads as under:

> "Sec. 6(2)(e) – that the applicant has, at any time during the period of five years immediately preceding the date of his application, been <u>convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years."</u>

The learned counsel submitted that in cases of a conviction being rendered by any competent criminal Court, there is a statutory prohibition for issuance of a passport.

3.17 The learned counsel for respondent No. 2 Mr. Harin P. Raval has further submitted that with regard to the other prayer for quashing criminal cases, revision application has been rendered infructuous in view of the fact that the criminal cases have been decided and judgement has been rendered convicting the applicant-party in person.

4. I have considered the facts and circumstances of the case. The applicant – party in person was already convicted in criminal cases which have been filed against him particularly before the learned Judicial Magistrate First Class, Dholka. From the record it appears that being aggrieved by the aforesaid order of the learned JMFC, Dholka, the party in person has filed appeal No. 1/2007 and appeal No. 2 of 2007 before the learned Sessions Judge and the appeals are pending.

5. In view of Section 6(2)(e) of the Passport Act there is prohibition to issue passport. In view of the fact that the appeals are pending and in view of the fact that there is prohibition under Section 6(2)(e) of the Passport Act, this Court cannot direct the passport authority to issue passport to the applicant-party in person. In view of the same, the Criminal Revision Application is rejected. However, in future if the appeals are disposed the applicant can again make an application for fresh passport before the Passport authority and the Passport authority will decide the same in accordance with law. The rejection of the present Revision Application will not come in the way of the passport authority in processing the application of the applicant for fresh passport.

(K.M. MEHTA, J)

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